

REMARKS

This Amendment is submitted in reply to the final Office Action mailed on June 3, 2009. The Office Action provided a three-month shortened statutory period in which to respond, ending on September 3, 2009. Accordingly, this amendment is timely submitted and no fee is believed due in connection with this Amendment. The Commissioner is hereby authorized to charge Deposit Account No. 50-4498 in the name of Nestle Nutrition for any fees that maybe deemed owed or credit any overpayment.

The Applicant has fully considered the Office Action and cited references and submits this Reply and Amendment in response to the outstanding rejections. Reconsideration of the application for patent is requested. Applicants do not acquiesce in the correctness of the rejections or objections and reserve the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further Applicants reserve the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application.

Claims 2-3, 7-8 and 10-36 are currently pending. Claims 25-26 were previously withdrawn. Claims 1, 4-6 and 9 were previously canceled. In the Office Action, Claims 2-3, 7-8, 10-24 and 27-36 are rejected under 35 U.S.C. §103. In response Claims 2, 7, 11-12 and 30 have been amended, and Claims 10 and 31-32 have been canceled. These amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicant respectfully submits that the rejections should be withdrawn.

In the Office Action, Claims 2-3, 7-8, 17, 19, 24, 27-28 and 30-36 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0104246 to Kawaguchi, et al. ("*Kawaguchi*") in view of U.S. Patent No. 4,801,007 to Rule ("*Rule*"). Claims 20-23 and 29 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi* and *Rule* in further view of U.S. Patent No. 5,141,133 to Ninomiya, et al. ("*Ninomiya*"). Applicant respectfully disagrees with and traverses these rejections for at least the reasons set forth below.

Applicant has amended independent Claims 2 and 7 to recite, in part, that the tube part comprises a first venting means for venting an interior of the laminated paper packaging system. The amendment is supported in the specification, for example, at page 5, lines 19-24 and Figures 1-3. Applicant has amended independent Claim 30 to recite, in part, a rigid tube part having at

about the second end a first rim means comprising a rigid material and a second rim means comprising a flexible material more distal thereon. The amendment is supported in the specification, for example, at page 16, line 21 to page 17, line 9 and Figure 5. In contrast, Applicant respectfully submits that the cited references alone or in combination fail to disclose or suggest every element of the present claims and/or the skilled artisan would have no reason to combine the references to arrive at the present claims.

In embodiments encompassed by Claims 2 and 7, the connector devices advantageously comprise a venting means in order to allow the laminated paper packaging to remain its shape upon emptying it from the composition to be administered. Such a venting means may, for example, comprise a valve means allowing air to enter through the valve means while preventing the composition to be administered to exit and/or to flow through the venting means.

In an embodiment encompassed by Claim 30, a connector device 1 shown on the left hand side in FIG. 5 comprises section 5, i.e. tube portion, for attachment of the feeding line of the enteral administration set. Two rims 50,51 are provided. Rims 50,51 may extend in parallel around spike 20 and may be axially spaced from each other at a predetermined distance. This predetermined distance may be chosen such that laminated paper packaging system 4 and aluminum foil 17 are fittingly arranged between rim 50 and rim 51. Rim 51, which is arranged nearer to the point of spike 20, is made from a flexible material whereas rim 50 is made from a rigid material. The flexibility of rim 51 is important in this embodiment because rim 51 must be introduced through hole 21 (see FIG. 4) into the interior of the laminated paper packaging system without damaging the laminated paper packaging system. In order to allow such introduction, rim 51 must be sufficiently flexible. Once spike 20 has been introduced into the interior of laminated paper packaging system 4 laminated paper packaging system 4 and aluminum foil 17 are fittingly compressed between rim 51 and rim 50 thus establishing a tight fit. Composition may then exit from the interior of laminated paper packaging system 4 through the established passageway 5a.

Kawaguchi and *Rule* fail to disclose or suggest a first venting means for venting an interior of the laminated paper packaging system as required by Claims 2 and 7. In fact, the Patent Office admits same by failing to provide any support within *Kawaguchi* and *Rule* for this element.

Applicant further submits that the skilled artisan would have no reason to combine *Evans* with *Kawaguchi* and *Rule* to arrive at independent Claims 2 and 7 because the cited references are entirely directed to devices having different modes of operation. Moreover, one should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

Kawaguchi discloses an elongated pipe adapter body 12 that can be fixed to a beverage pack through a hole on the beverage pack. The elongated pipe adapter body 12 has a passage 12g for fluid to pass through. See *Kawaguchi*, Figures 1-2. The elongated pipe adapter body 12 is designed so that the top joint 12 of the body 12 can be fitted within a tube 30. The elongated pipe adapter body 12 also has a bottom pointed end 12 that fits entirely within a fixing member 14 and the beverage pack. As a result, most of the entire elongated pipe adapter body 12 is within positioned within the tube 30 and the fixing member 14 and the beverage pack during operation.

Similarly, *Rule* discloses a tubular teat mounting 21 having a passage. The tubular teat mounting 21 has a top portion that is entirely covered by a teat. See *Rule*, Figures 4-7. The tubular teat mounting 21 also has a bottom spike 34 that is designed to fit entirely within a container 11.

Evans discloses an outlet member 18 having parallel passages 36 and 38 for fluid flow and for venting, respectively. See *Evans*, Figures 1-2. The outlet member 18 is designed so that the entire cylindrical tip portion 20 fits into a hole of a bottle 10. Meanwhile, the outlet member 18 has a bottom portion 34 that has a passage 40 to receive a tip of a bottle 24 while the other parallel passage 38 is vented open to the air (via the check valve ball 56 and the filter medium 58).

The Patent Office asserts that it would have been obvious to add the venting mechanism of *Evans* to the elongated pipe adapter body of *Kawaguchi* or the tubular teat mounting of *Rule* to allow air to vent to their respective packages. Applicant respectfully disagrees because the elongated pipe adapter body of *Kawaguchi* and the tubular teat mounting of *Rule* are incapable of utilizing the venting mechanism taught by *Evans*. As previously discussed, the elongated pipe adapter body of *Kawaguchi* has top and bottom portions that are completely enclosed by a tube and a container, respectively. Similarly, the tubular teat mounting of *Rule* have top and bottom

portions that are completely enclosed by a teat and a container, respectively. As a result, the venting mechanism of *Rule* installed in either *Kawaguchi* or *Rule* would be completely covered by the tubing or the teat, which would render the venting mechanism inoperable because it would not be able to vent to the atmosphere as taught by *Evans*. Because of the differences in function and operation between *Kawaguchi* or *Rule* in view of *Evans*, one skilled in the art would have no reason to modify or combine *Kawaguchi*, *Rule* and *Evans* to arrive at the present claims.

In addition, Applicant further submits that the skilled artisan would have no reason to combine *Ninomiya* with *Kawaguchi* and *Rule* to arrive at independent Claim 20 because the cited references are entirely directed to devices having different modes of operation. As previously discussed, *Kawaguchi* discloses an elongated pipe adapter body 12 where most of the entire elongated pipe adapter body 12 is within positioned within the tube 30 and the fixing member 14 and the beverage pack during operation. Similarly, *Rule* discloses a tubular teat mounting 21 having a passage having a top portion that is entirely covered by a teat and a bottom spike 34 that is designed to fit entirely within a container 11.

In contrast, *Ninomiya* discloses a pouring plug having a tubular body 1 and a lid 2 that fits within the tubular body 1. The lid 2 includes a bottom edge portion having a saw tooth blade 12a. The pouring plug is designed to fit on top of the container with only the saw tooth blade 12a rupturing a surface of the container. See *Ninomiya*, Figure 4. As a result, most of the tubular body 1 and a lid 2 does not enter the container.

On the other hand, *Kawaguchi* and *Rule* disclose devices where the entire bottom portions of the devices are designed to enter and fit within the container and container walls. For example, the elongated pipe adapter body of *Kawaguchi* includes the bottom pointed end that fits within the container to form a tight fluid flow with the container wall. See *Kawaguchi*, Figure 4. The tubular teat mounting of *Rule* has the bottom spike that is designed to fit and be locked entirely within the container. In view of the teachings of *Kawaguchi* and *Rule*, Applicant respectfully submits that the skilled artisan would not shorten the bottom pointed end of the elongated pipe adapter body in *Kawaguchi* or the bottom spike of the tubular teat mounting of *Rule* in view of *Ninomiya* because to do so would render the devices of *Kawaguchi* and *Rule* inoperable.

Applicant respectfully submits that the Patent Office has not sufficiently explained how *Kawaguchi* or *Rule* could be modified with either the venting mechanism of *Evans* or the pouring plug of *Ninomiyi* in an effective manner to allow *Kawaguchi* or *Rule* to operate as intended. Instead, the Patent Office generally concludes that it would have been within the ordinary skill of the art at the time the claimed invention was made because the references relied upon allegedly teach that all aspects of the claimed invention were individually known in the art. See Office Action, page 3, lines 7-11. However, this conclusory statement is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). There must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness by the Examiner. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

Finally, *Kawaguchi* and *Rule* fail to teach or even suggest a rigid tube part having a first rim means comprising a rigid material and a second rim means comprising a flexible material as required by Claim 30. The Patent Office asserts that the plastic material forming flanges 33 and 35 on the tubular teat mounting in *Rule* are rigid and flexible. The Patent Office asserts that, for the mere reason that plastics are routinely formulated to have both qualities, the plastic of *Rule* is interpreted as having a rigid quality and a flexible quality.

Applicant respectfully disagrees with the Patent Office's assertions and submits that the Patent Office has failed to providing any specific support within *Rule* showing that the tubular teat mounting has a rigid flange and a flexible flange. In fact, *Rule* fails to disclose or suggest anywhere that the tubular teat mounting even has a rigid portion and a flexible portion. Instead, *Rule* shows that the tubular teat mounting is a unitary piece made of the same material, whether rigid or flexible, throughout the mounting. For example, the cross-section views of the tubular teat mounting (Figures 4 and 9) all have the same uniform hatch lines showing that the material is the same throughout. As a result, Applicant respectfully submits that *Rule* alone or in combination with *Kawaguchi* fails to disclose or suggest a first rim means comprising a rigid material and a second rim means comprising a flexible material.

Applicant respectfully submits that it is only with a hindsight reconstruction of Applicant's claimed invention that the Patent Office is able to even attempt to piece together the

teachings of the prior art so that the claimed invention is allegedly rendered obvious. However, the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). One should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

In sum, the cited references fail to even recognize the advantages, benefits and/or properties of the connector devices in accordance with the present claims. For at least the reasons discussed above, Applicant respectfully submits that independent Claims 2, 7, 20 and 30, along with the claims that depend from Claims 2, 7, 20 and 30, are novel, nonobvious and distinguishable from the cited references.

Accordingly, Applicant respectfully requests that the rejections of Claims 2-3, 7-8, 17, 19, 20-24, 27-29 and 30-36 under 35 U.S.C. §103 be withdrawn.

Claims 10-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi* and *Rule* in further view of U.S. Patent No. 2,668,533 to Evans ("*Evans*"). Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi*, *Rule* and *Evans* in further view of U.S. Patent No. 4,921,138 to Quinn, et al. ("*Quinn*"). Claims 13-14, 16 and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi* and *Rule* in further view of U.S. Patent No. 5,993,422 to Schafer ("*Schafer*"). Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi*, *Rule* and *Schafer* in further view of U.S. Patent No. 2,969,063 to Broman ("*Broman*"). Applicant respectfully submits that the patentability of Claim 2 as previously discussed renders moot the obviousness rejections of Claims 10-16 and 18 that depend from Claim 2. In this regard, the cited art fails to teach or suggest the elements of Claims 10-16 and 18 in combination with the novel elements of Claim 2.

For the foregoing reasons, Applicant respectfully requests reconsideration of the above-identified patent application and earnestly solicits an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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